

MOTIONS FOR NEW TRIAL — Rule 24.1 — In general — Revised 10/2009

Rule 24.1, Ariz. R. Crim. P., governs motions for new trial. That rule reads as follows:

Rule 24.1. Motion for new trial.

- a. Power of the Court. When the defendant has been found guilty or sentenced to death by a jury or by the court, the court on motion of the defendant, or on its own initiative with the consent of the defendant, may order a new trial or, in a capital case, an aggravation or penalty hearing.
- b. Timeliness. A motion for a new trial shall be made no later than 10 days after the verdict has been rendered.
- c. Grounds. The court may grant a new trial or aggravation or penalty hearing for any of the following reasons:
 - (1) The verdict is contrary to law or to the weight of the evidence;
 - (2) The prosecutor has been guilty of misconduct;
 - (3) A juror or jurors have been guilty of misconduct by:
 - (i) Receiving evidence not properly admitted during the trial or the aggravation or penalty hearing;
 - (ii) Deciding the verdict by lot;
 - (iii) Perjuring himself or herself or willfully failing to respond fully to a direct question posed during the voir dire examination;
 - (iv) Receiving a bribe or pledging his or her vote in any other way;
 - (v) Becoming intoxicated during the course of the deliberations; or
 - (vi) Conversing before the verdict with any interested party about the outcome of the case;
 - (4) The court has erred in the decision of a matter of law, or in the instruction of the jury on a matter of law to the substantial prejudice of a party;
 - (5) For any other reason not due to the defendant's own fault the defendant has not received a fair and impartial trial or capital sentencing.
- d. Admissibility of Juror Evidence To Impeach the Verdict. Whenever the validity of a verdict is challenged under Rule 24.1(c)(3), the court may receive the testimony or affidavit of any witness, including members of the jury, which relates to the conduct of a juror, official of the court, or third person. No testimony or affidavit shall be received which inquires into the subjective motives or mental processes which led a juror to assent or dissent from the verdict.

"Motions for new trial are disfavored and should be granted with great caution." *State v. Spears*, 184 Ariz. 277, 287, 908 P.2d 1062, 1072 (1996); *State v. Rankovich*, 159 Ariz. 116, 121, 765 P.2d 518, 523 (1988). The decision whether to grant a new trial is within the sound discretion of the trial court, and review of a trial court's denial of a motion for a new trial is based on the abuse of discretion standard. *State v. Hoskins*, 199 Ariz. 127, 142, 14 P.3d 997, 1012 (2000). *State v. Rankovich*, 159 Ariz. 116, 121, 765 P.2d 518, 523 (1988); *State v. Hansen*, 156 Ariz. 291, 295, 751 P.2d 951, 955 (1988). Thus, when the trial court considers a motion for new trial, the court has more discretion than when the court considers a motion for a directed verdict under Rule 20, Ariz. R. Crim. P. because unlike a motion for a

directed verdict, a motion for a new trial is discretionary and as such, in considering the motion for new trial, the trial court may weigh the evidence and consider the credibility of witnesses. *State v. Tubbs*, 155 Ariz. 533, 535, 747 P.2d 1232, 1234 (App. 1987). In *State v. Clifton*, 134 Ariz. 345, 656 P.2d 634 (App. 1982), the Court of Appeals reasoned "In considering a motion for a new trial, the object is to promote justice and protect the innocent. *State v. Chase*, 78 Ariz. 240, 278 P.2d 423 (1954). The decision might be the last made by the trial judge before the defendant is incarcerated. As such, the court's power is significantly broader than it is in considering a motion for judgment of acquittal." *State v. Clifton*, 134 Ariz. at 348, 656 P.2d at 637.

Rule 24.1(c) provides five (5) grounds for justifying a new trial. The Comment to Rule 24.1 states, "The motion for new trial is intended to permit the defendant to raise for reconsideration any errors occurring in the conduct of the trial. More fundamental matters which rise to the level of jurisdictional defects in the proceeding are raisable by a motion to vacate judgment under Rule 24.2." Similarly, Rule 24.1(c)(3) explicitly lists the six (6) types of juror misconduct justifying a new trial and is intended to be construed to exclude all others. See 24.1(c)(3), Comment; *State v. Chaney*, 141 Ariz. 295, 311, 686 P.2d 1265, 1281 (1984). Under Rule 24.1(d), a juror may testify on a motion for new trial that certain specified jury misconduct occurred, but the testimony must regard only the misconduct set forth in Rule 24.1(c)(3) to protect the integrity of the verdict and the privacy of the jury's deliberations. See 24.1(d); *State v. Callahan*, 119 Ariz. 217, 580 P.2d 355 (App. 1978). Evidence of juror misconduct which inquires into the subjective motives or mental processes of a juror does not satisfy Rule 24.1(c)(3) and is inadmissible under the explicit wording of Rule 24.1(d). *State v. Hall*, 129 Ariz. 589, 595, 633 P.2d 398, 404 (1981), overruled on other grounds; *State v. Callahan*, 119 Ariz. 217, 580 P.2d 355 (App. 1978). Regardless the specific ground for new trial asserted, the Comment further states that all grounds for new trial listed in this Rule are subject to the "harmless error" analysis.

When the jury considers extrinsic evidence — that is, information from an outside source that was not presented at trial — the trial court must grant a new trial unless the trial court determines beyond a reasonable doubt that the extrinsic evidence could not have affected the verdict.¹ See Rule 24.1(c)(3)(i); *State v. Spears*, 184 Ariz. 277, 289, 908 P.2d 1062, 1074 (1996); *State v. Hansen*, 156 Ariz. 291, 295, 751 P.2d 951, 955 (1988). In *State v. Meehan*, 139 Ariz. 20, 22, 676 P.2d 654, 656 (App. 1983), the coat the defendant was wearing when he was arrested was admitted in evidence and the jurors took the coat to the jury room during deliberations. The jurors then discovered marijuana in the coat, which had not been admitted into evidence, and discussed it during deliberations. The Court of Appeals found that the trial court did not abuse its discretion in ordering a new trial because the trial court could not conclude beyond a reasonable doubt that this fact did not contribute to the verdict. *Id.* In *State v. McLoughlin*, 133 Ariz. 458, 461, 652 P.2d 531, 534 (1982), the trial court should have granted a new trial because the jurors received outside information concerning the effect of an acquittal by reason of insanity. In *State v. Lang*, 176 Ariz. 475, 483-84, 862 P.2d 235, 243-44 (App. 1993), a new trial was required when a police officer-witness

¹ This standard of review was adopted by the Arizona Supreme Court from the Ninth Circuit. (See *State v. Hall*, 204 Ariz. 442, 447, 65 P.3d 90, 95 (2003).)

improperly fraternized with jurors, thus bolstering his credibility with them and possibly affecting the verdict.